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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,946	11/03/2003	Bruce M. Campbell	1440-9	4355
7590 05/11/2005			EXAMINER	
Galgano & Burke Suite 35 300 Rabro Drive Hauppauge, NY 11788			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,946

Applicant(s)

CAMPBELL, BRUCE M.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/24/2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

With regard to applicant's statement that "Despite the fact that candles have been known for thousands of years and that prior attempts to identify wicks have been made (but failed - see pg. 4, 3rd paragraph), no one has solved this problem until now. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, **WESTON (US 1856676)**, **O'ROURKE (US 5711254)**, and newly presented **MEAGHER (US004165002)** and **NOBORI (US005647401)**, present teachings related to means for identification of various characteristic or information about articles.

In response to applicant's argument that **WESTON (US 1856676)**, **O'ROURKE (US 5711254)** is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, **WESTON (US 1856676)**, **O'ROURKE (US 5711254)**, and newly presented **MEAGHER**

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(US004165002) and NOBORI (US005647401), are reasonably pertinent to the particular problem with which the applicant was concerned in that they present teachings related to means for identification of various characteristic or information about articles.

Drawings

The amendment filed 07/21/2004 is objected to under 35 U.S.C. 132 because it introduces. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The cross hatching for elements 12, 20 (figure 1); 112, 120 (Figure 4); 212, 220 (Figure 7); and 312, 320 (Figure 10) constitute new matter since these portions of the invention are now illustrated in a manner that is detailed than that originally filed.

Applicant is required to cancel the new matter in the reply to this Office Action.

New Corrected Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

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Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16: Rejected under 35 U.S.C. 102(b)/ 103(a)

Claim 1-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over **O'ROURKE (US005711254)**.

In regard to claim 1-16, the recitation "candle wick" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In regard to claim 1-16, the recitation(s), such as, "a candle wick body" and "suitable for use in the manufacture of a candle", "suitable for use in the manufacture of a candle", "said code also indicates the manufacturer of said wick" and "said characteristics are selected from the group consisting of wick type, yield, rate of combustion, flame height, and pool diameter" are deemed statements of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this regard the article defined in applicant's claim 1 includes no positive recitation of structure which would distinguish it from the color coded (see column 4, lines 33-43) prior art article discloses in **O'ROURKE (US005711254)**.

O'ROURKE (US005711254) shows (Figures 2-4) and discloses a body and column 6, lines 23-45) the following:

In column 4, lines 33-43, **O'ROURKE (US005711254)** states:

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"If desired, all or a portion of the threads comprising shell 12 could be colored with one or more non-toxic dyes prior to forming the strands to provide a colored or multicolored appearance for the chew toy 10 or to provide an identification of a particular flavoring which has been imparted to the toy. Such color coding could also be achieved by the use of differently colored synthetic threads in the formation of core 14 where the ends of the core would be visible as in the preferred toy configuration illustration FIG. 1.

In column 4, lines 50-65, **O'ROURKE (US005711254)** states:

As seen in FIG. 3, the chew toy 20 of this alternate embodiment is comprised of three twisted composite strands or skeins 22, 24 and 26 with each strand being formed so as to comprise an outer soft pliable shell 28 and an inner core 30. Each of the shells 28 is preferably comprised of a plurality of cotton or blended cotton threads which are twisted about a core 30. As with core 14 of the prior embodiment each of the cores 30 is formed of natural plant fibers such as sisal or of synthetic fibers such as nylon, orlon or polyester.

In column 6, lines 13-38, **O'ROURKE (US005711254)** states:

(14) Because the alternate embodiment of the invention employs three separate cores 30 as opposed to the single central core 14 of the prior embodiment, the individual cores 30 must be of a smaller diameter than the single core 14 to provide a length of composite rope 32 of the same diameter as a length of composite rope 15. FIG. 4 illustrates different numbers and configurations of sisal strands comprising a core 30 which might be employed in differently sized composite strands 22, 24 and 26 to form the composite rope 32 in varying diameters. The single strand core 30' is utilized in the small diameter strands 22, 24 and 26 for forming the smaller diameter rope. As the desired diameter of the composite rope 32 increases, the number of the twisted strands in each core 30 is preferably increased as illustrated in FIG. 4. For example, using strands of threads of about 5/32 inch in diameter, a single strand core 30' could be employed in each of strands 22, 24 and 26 to form a length of composite rope 32 having a diameter of about 3/4 inch. A double strand core 30" could be employed in forming a length of such rope having a diameter of about one inch. A three strand core 30''' could be used in forming rope of a diameter of about 1 1/8 inch. Four strands could be used in rope of about 1 3/8 inches in diameter and, for extremely large diameter rope on the order of 2 inches in diameter, six of the 5/32 inch diameter sisal strands could be used. As seen in FIG. 4, the thickness of the outer cotton shells 28 of strands 22, 24 and 26 is also increased in the larger diameter strands. By so varying the diameter of the composite rope, differently sized chew toys 20 can be formed for differently size dogs.

In regard to claims 1-16, **O'ROURKE (US005711254)** shows and discloses a body

having a monochromatic natural plant fiber outer surface (28) and inner region (30) including at

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least one colored natural plant fiber filament (30', 30'', etc.). The color coded filaments in O'ROURKE (US005711254) not being visible on the outer surface (28) of the article.

It is noted that natural plant fiber, such as the natural cotton fiber material disclosed in O'ROURKE (US005711254) is known to have properties suitable for forming candle wicks. Therefore, it would have been obvious to a person having ordinary skill in the art that the characteristics of the natural cotton fiber material body of O'ROURKE (US005711254) would be suitable for use in candle manufacturing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16: Rejected under 35 U.S.C. 103(a)

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being obvious over JP '202 (JP 07-253202) in view of WESTON (US 1856676), O'ROURKE (US 5711254), MEAGHER (US004165002) or NOBORI (US005647401).

In regard to claims 1-16, the recitation "candle wick" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness

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but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In regard to claims 1-16, the recitation(s), such as, “a candle wick body” and “suitable for use in the manufacture of a candle” “said code also indicates the manufacturer of said wick” and “said characteristics are selected from the group consisting of wick type, yield, rate of combustion, flame height, and pool diameter” are deemed statements of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

JP ‘202 (JP 07-253202) discloses a candle wick, comprising:

- an outer surface (13) and an inner region (11) made of combustible materials suitable for use in the manufacture of a candle.

JP ‘202 (JP 07-253202) discloses the invention substantially as set forth in the claims with possible exception to the outer surface being substantially monochromatic, and the inner region including at least one colored identification filament that is not visible on the outer surface of the candle wick.

For the purpose of providing color coded identification means not visible on the outer surface and article, each of **WESTON (US 1856676)** (see page 1, lines 65-95), **O’ROURKE (US 5711254)** (see Figures 2-4; column 4, lines 34-43), **MEAGHER (US004165002)** (see

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column 2, lines 39-41 and 65-68) and **NOBORI (US005647401)** (see column 2, lines 29-43 and 59-65; column 6, lines 40-45) teach, from the same elongated flexible article field of endeavor as **JP '202 (JP 07-253202)**, forming articles such as flexible cables and rope members with outer surfaces being substantially monochromatic, and inner regions including at least one colored identification filament which is not visible on the outer surface of the candle wick.

In regard to claims 1-16, for the purpose of providing means for readily identifying certain characteristics of the **JP '202 (JP 07-253202)** candle wick, it would have been obvious to a person having ordinary skill in the art to modify the inner region of JP '202 to include one, or multiple, colored filaments visible only at the ends of the core to provide a color coding indication of characteristics of the article, in view of the teaching of **WESTON (US 1856676)**, **O'ROURKE (US 5711254)**, **MEAGHER (US004165002)** or **NOBORI (US005647401)**.

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

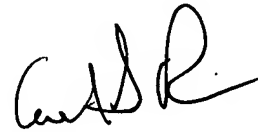
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is **(571) 272-4880**. The examiner can normally be reached on Monday through Friday between **6:30am-3:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on **(571) 272-4877**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749

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